

VIDEO VOYEURISM PREVENTION ACT OF 2003

MAY 20, 2004.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SENSENBRENNER, from the Committee on the Judiciary,
submitted the following

R E P O R T

[To accompany S. 1301]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (S. 1301) to amend title 18, United States Code, to prohibit video voyeurism in the special maritime and territorial jurisdiction of the United States, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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THE AMENDMENT

The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Video Voyeurism Prevention Act of 2004”.

SEC. 2. PROHIBITION OF VIDEO VOYEURISM.

(a) IN GENERAL.—Title 18, United States Code, is amended by inserting after chapter 87 the following new chapter:

“CHAPTER 88—PRIVACY

“Sec.

“1801. Video voyeurism.

“§ 1801. Video voyeurism

“(a) Whoever, in the special maritime and territorial jurisdiction of the United States, has the intent to capture an image of a private area of an individual without their consent, and knowingly does so under circumstances in which the individual has a reasonable expectation of privacy, shall be fined under this title or imprisoned not more than one year, or both.

“(b) In this section—

“(1) the term ‘capture’, with respect to an image, means to videotape, photograph, film, record by any means, or broadcast;

“(2) the term ‘broadcast’ means to electronically transmit a visual image with the intent that it be viewed by a person or persons;

“(3) the term ‘a private area of the individual’ means the naked or undergarment clad genitals, pubic area, buttocks, or female breast of that individual;

“(4) the term ‘female breast’ means any portion of the female breast below the top of the areola; and

“(5) the term ‘under circumstances in which that individual has a reasonable expectation of privacy’ means—

“(A) circumstances in which a reasonable person would believe that he or she could disrobe in privacy, without being concerned that an image of a private area of the individual was being captured; or

“(B) circumstances in which a reasonable person would believe that a private area of the individual would not be visible to the public, regardless of whether that person is in a public or private place.

“(c) This section does not prohibit any lawful law enforcement, correctional, or intelligence activity.”.

(b) AMENDMENT TO PART ANALYSIS.—The table of chapters at the beginning of part I of title 18, United States Code, is amended by inserting after the item relating to chapter 87 the following new item:

“88. Privacy 1801”.

PURPOSE AND SUMMARY

S. 1301, the “Video Voyeurism Prevention Act of 2003,” amends the Federal Criminal Code to prohibit a person, in the special maritime and territorial jurisdiction of the United States, from intentionally capturing an image of a private area of an individual without that individual’s consent and the person capturing the image knowingly does so under circumstances in which the individual has a reasonable expectation of privacy.

BACKGROUND AND NEED FOR THE LEGISLATION

The issue of “video voyeurism” is becoming a greater privacy concern. The development of small, concealed cameras and cell phone cameras, along with the instantaneous distribution capabilities of the Internet, have combined to create a threat to the privacy of unsuspecting adults, high school students, and children. There have been a number of instances across the country where individuals have been subjected to a violation of their privacy, only to find it compounded when the pictures or photographs find their way to the Internet. While more states have enacted laws in recent years, there are still great gaps in privacy protection.

Assisted by this miniaturized technology, voyeurs have found their way to high school locker rooms, department store dressing rooms, and even homes. One of the more publicized cases involved Susan Wilson of Monroe, Louisiana. She made a startling discovery when she traced camera equipment installed in her attic to small holes in ceilings throughout her house. A neighbor had been secretly watching her and her family for months. At the time of this incident, Louisiana had not yet made this invasive act illegal.

Although many states since have passed laws to target video voyeurism to protect those in a private area out of public view (including restrooms, locker rooms, and private dwellings), there are fewer protections for individuals who may be photographed in compromising positions in public places. The terms “upskirting” and “downblousing” refer to forms of voyeurism that are appearing with increasing frequency.

S. 1301 makes the act of “video voyeurism” on Federal land such as national parks or Federal buildings, using the well-accepted legal concept that individuals are entitled to a reasonable expectation of privacy. It also serves as model legislation for states that have not enacted their own laws, or that need to update existing laws in light of the rapid spread of camera technology. This crime would be punishable by a fine of not more than \$100,000 or imprisonment for up to 1 year, or both. S. 1301, the “Video Voyeurs Prevention Act of 2003,” is similar in substance to H.R. 2405, the “Video Voyeurism Prevention Act,” introduced by Representatives Oxley, Gonzalez, Goode, and Baird.

HEARINGS

No hearings in the Committee on the Judiciary were held on S. 1301.

COMMITTEE CONSIDERATION

On March 30, 2004, the Subcommittee on Crime, Terrorism, and Homeland Security met in open session and ordered favorably reported the bill, S. 1301, as amended, by a voice vote, a quorum being present. On May 13, 2004, the Committee met in open session and ordered favorably reported the bill, S. 1301, with an amendment by voice vote, a quorum being present.

VOTE OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee notes that there were no recorded votes during the committee consideration of S. 1301.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, S. 1301, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 14, 2004.

Hon. F. JAMES SENSENBRENNER, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1301, the Video Voyeurism Prevention Act of 2004.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz, who can be reached at 226-2860.

Sincerely,

DOUGLAS HOLTZ-EAKIN.

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

S. 1301—Video Voyeurism Prevention Act of 2004.

CBO estimates that implementing S. 1301 would have no significant cost to the Federal Government. Enacting the legislation could affect direct spending and revenues, but CBO estimates that any such effects would not be significant. S. 1301 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act, and would impose no costs on State, local, or tribal governments.

S. 1301 would make it illegal to videotape, photograph, or record individuals in certain States of undress when they have a reasonable expectation of privacy. Because the act would establish a new federal crime, the Government would be able to pursue cases that it otherwise would not be able to prosecute. However, we expect that S. 1301 would apply to a relatively small number of offenders, so any increase in costs for law enforcement, court proceedings, or prison operations would not be significant. Any such costs would be subject to the availability of appropriated funds.

Because those prosecuted and convicted under S. 1301 could be subject to criminal fines, the Federal Government might collect additional fines if the legislation is enacted. Collections of such fines are recorded in the budget as revenues, which are deposited in the Crime Victims Fund and later spent. CBO expects that any addi-

tional revenues and direct spending would not be significant because of the small number of cases involved.

On August 5, 2003, CBO transmitted a cost estimate for S. 1301 as reported by the Senate Committee on the Judiciary on July 24, 2003. The two versions of the legislation are very similar, and our cost estimates are identical.

The CBO staff contact for this estimate is Mark Grabowicz, who can be reached at 226–2860. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, S. 1301, is intended to impose criminal penalties to protect the privacy of individuals from the surreptitious use of hidden surveillance equipment that captures an individual’s image. Such crimes harm individuals who have a reasonable expectation of privacy. This legislation is intended to prevent such behavior.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8, of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Unless otherwise indicated, this discussion describes the bill as reported.

Sec. 1. Short Title.

Under this section, the new short title is the “Video Voyeurism Prevention Act of 2004.”

Sec. 2. Prohibition of Video Voyeurism.

Section 2 amends title 18 by inserting new Chapter 88, entitled Video Voyeurism. Under the new chapter 88, 18 U.S.C. § 1801(a) would prohibit video voyeurism which requires someone to have the intent to capture an improper image and to do so. Section 1801(b) provides definitions for “capture,” “broadcast,” “private area of the individual,” “female breast,” and “under circumstances in which that individual has a reasonable expectation of privacy.” New § 1801(c) provides exceptions for persons lawfully engaged in law enforcement or intelligence activities.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

* * * * *

PART I—CRIMES

Chap.		Sec.
1.	General provisions	1
	* * * * *	
88.	Privacy	1801
	* * * * *	

CHAPTER 88—PRIVACY

Sec.
1801. *Video voyeurism.*

§ 1801. Video voyeurism

(a) *Whoever, in the special maritime and territorial jurisdiction of the United States, has the intent to capture an image of a private area of an individual without their consent, and knowingly does so under circumstances in which the individual has a reasonable expectation of privacy, shall be fined under this title or imprisoned not more than one year, or both.*

(b) *In this section—*

(1) *the term “capture”, with respect to an image, means to videotape, photograph, film, record by any means, or broadcast;*

(2) *the term “broadcast” means to electronically transmit a visual image with the intent that it be viewed by a person or persons;*

(3) *the term “a private area of the individual” means the naked or undergarment clad genitals, pubic area, buttocks, or female breast of that individual;*

(4) *the term “female breast” means any portion of the female breast below the top of the areola; and*

(5) *the term “under circumstances in which that individual has a reasonable expectation of privacy” means—*

(A) *circumstances in which a reasonable person would believe that he or she could disrobe in privacy, without being concerned that an image of a private area of the individual was being captured; or*

(B) *circumstances in which a reasonable person would believe that a private area of the individual would not be visible to the public, regardless of whether that person is in a public or private place.*

(c) *This section does not prohibit any lawful law enforcement, correctional, or intelligence activity.*

MARKUP TRANSCRIPT
BUSINESS MEETING
WEDNESDAY, MAY 12, 2004

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:00 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr. [Chairman of the Committee] presiding.

Chairman SENSENBRENNER. The Committee will be in order. A quorum is present.

[Intervening business.]

Chairman SENSENBRENNER. The next item on the agenda is S. 1301, the "Video Voyeurism Prevention Act of 2003." The Chair recognizes the gentleman from North Carolina, Mr. Coble, the Chairman of the Subcommittee on Crime, Terrorism, and Homeland Security.

Mr. COBLE. Mr. Chairman, the Subcommittee on Crime, Terrorism, and Homeland Security reports favorably the bill S. 1301 with a single amendment in the nature of a substitute in lieu of its favorable recommendation to the full House.

Chairman SENSENBRENNER. Without objection the bill will be considered as read and open for amendment at any point, and the Subcommittee amendment in the nature of a substitute, which the Members have before them, will be considered as read, considered as the original text for purposes of amendment, and open for amendment at any point.

The Chair recognizes the gentleman from North Carolina, Mr. Coble, to strike the last word.

[The Subcommittee Amendment in the Nature of a Substitute follows:]

**SUBCOMMITTEE AMENDMENT IN THE NATURE OF
A SUBSTITUTE TO S. 1301**

[Showing the text as ordered reported by the Subcommittee
on Crime, Terrorism, and Homeland Security on 30 MARCH
2004]

Strike all after the enacting clause and insert the
following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Video Voyeurism Pre-
3 vention Act of 2004”.

4 SEC. 2. PROHIBITION OF VIDEO VOYEURISM.

5 (a) IN GENERAL.—Title 18, United States Code, is
6 amended by inserting after chapter 87 the following new
7 chapter:

8 “CHAPTER 88—PRIVACY

“Sec.
“1801. Video voyeurism.

9 “§ 1801. Video voyeurism

10 “(a) Whoever, in the special maritime and territorial
11 jurisdiction of the United States, has the intent to capture
12 an image of a private area of an individual without their
13 consent, and knowingly does so under circumstances in
14 which the individual has a reasonable expectation of pri-
15 vacy, shall be fined under this title or imprisoned not more
16 than one year, or both.

1 “(b) In this section—

2 “(1) the term ‘capture’, with respect to an
3 image, means to videotape, photograph, film, record
4 by any means, or broadcast;

5 “(2) the term ‘broadcast’ means to electroni-
6 cally transmit a visual image with the intent that it
7 be viewed by a person or persons;

8 “(3) the term ‘a private area of the individual’
9 means the naked or undergarment clad genitals,
10 pubic area, buttocks, or female breast of that indi-
11 vidual;

12 “(4) the term ‘female breast’ means any portion
13 of the female breast below the top of the areola; and

14 “(5) the term ‘under circumstances in which
15 that individual has a reasonable expectation of pri-
16 vacy’ means—

17 “(A) circumstances in which a reasonable
18 person would believe that he or she could dis-
19 robe in privacy, without being concerned that
20 an image of a private area of the individual was
21 being captured; or

22 “(B) circumstances in which a reasonable
23 person would believe that a private area of the
24 individual would not be visible to the public, re-

1 regardless of whether that person is in a public
2 or private place.

3 “(c) This section does not prohibit any lawful law en-
4 forcement, correctional, or intelligence activity.”.

5 (b) AMENDMENT TO PART ANALYSIS.—The table of
6 chapters at the beginning of part I of title 18, United
7 States Code, is amended by inserting after the item relat-
8 ing to chapter 87 the following new item:

“88. Privacy 1801”.

Mr. COBLE. I thank the Chairman.

Mr. Chairman and colleagues, S. 1301, the "Video Voyeurism Prevention Act of 2003" is a bill introduced by Senators DeWine, Leahy and Schumer, and it amends the Federal Criminal Code to prohibit knowingly capturing an improper image of an individual without that individual's consent.

Under the bill an improper image depicts an individual naked or partially naked under circumstances in which that individual has a reasonable expectation of privacy.

The Senate passed S. 1301 by unanimous consent on July 24, 2003, and Congressmen Oxley, Gonzalez, Goode and Baird introduced a bill that was substantially identical in the House. As Senator Leahy stated, this bill targets the pernicious practice of invading a person's privacy through the surreptitious use of hidden or concealed surveillance equipment. The bill makes it a crime to capture an improper naked or near naked image of a person without his or her consent, and in such a way as to violate that person's privacy.

On March 30th, 2004, the Subcommittee on Crime, Terrorism, and Homeland Security voted in favor of an amended bill. The amended version is substantially identical to the original. Additionally, Representative Jackson Lee, the distinguished lady from Texas, added a definition to the term "broadcast." These changes, in my opinion, improve the bill, and it is my understanding that the original sponsors in the House and the Senate support the change.

I urge my colleagues to support S. 1301, and yield back the balance of my time.

Chairman SENSENBRENNER. Gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Chairman, I'm pleased to join the gentleman from North Carolina, the Chairman of the Subcommittee, in support of S. 1301, the "Video Voyeurism Prevention Act of 2003." This bill was developed in the Senate and the House on a bipartisan basis with appropriate input from all interest groups.

I feel the bill is narrowly tailored to avoid intrusions on constitutionally protected freedoms, and so the offensive behavior prescribed in the bill can be punished without trampling on individual freedoms.

Mr. Chairman, I therefore, support the bill and urge my colleagues to do the same.

I yield back the balance of my time.

Chairman SENSENBRENNER. Without objection, all Members' opening statements will appear in the record at this point.

[The prepared statement of Ms. Jackson Lee follows:]

SHEILA JACKSON LEE
18th District, Texas

COMMITTEES:
SELECT COMMITTEE ON
HOMELAND SECURITY
SUBCOMMITTEES:
INTELLIGENCE AND DOMESTIC SECURITY
CYBERSECURITY, SAFETY, AND
RESEARCH & DEVELOPMENT

JUDICIARY
SUBCOMMITTEES:
CRIME
RANKING MEMBER
IMMIGRATION AND CITIZENSHIP

SCIENCE
SUBCOMMITTEE
SPACE AND AERONAUTICS

MEMBER
DEMOCRATIC CAUCUS POLICY AND
STEERING COMMITTEE
1ST DEPT. CHAIR
CONGRESSIONAL BLACK CAUCUS

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CONGRESSWOMAN SHEILA JACKSON LEE:

JUDICIARY COMMITTEE
MARKUP HEARING ON: S. 1301, THE "VIDEO VOYEURISM
PREVENTION ACT OF 2004"

MARKUP HEARING

MAY 12, 2004



Chairman Sensenbrenner and Ranking Member Conyers, I

appreciate your efforts to hold today's markup hearing to further
improve this bill as transmitted and reported out of the
Subcommittee on Crime, Terrorism, and Homeland Security. The
Video Voyeurism Prevention Act, sponsored by Senators Mike

DeWine and Charles Schumer covers the broadcast of “peeping-Tom” images on the internet, but only in places where the U.S. has special territorial and maritime jurisdiction, such as military bases or ships in U.S. waters. The bill makes it a crime to capture an improper, naked, or near-naked image of a person without consent. The maximum penalty under the bill is a year in prison and fines.

I appreciate the effort and consideration shown on both sides of the aisle back in March when we held a markup of S. 1301 in Subcommittee and I offered an amendment which was passed and has been incorporated as Section 1801(b)(2) of the bill as reported.

To reiterate my discussion during that hearing, this provision simply narrows the scope of the definition of “broadcast” to be limited to “electronically transmit[ting] a visual image with the intent that it be viewed by a person or persons.” The bill, as drafted, in Section 1801 (b) (1) criminalizes First Amendment free

speech on its face. Without that qualification of intent as to broadcasting the voyeuristic material, the provision would run the risk of failing constitutional muster.

This legislation is very important to protect the privacy of the individual under the First, Fourth, and Fifth Amendments to the U.S. Constitution. However, due to the technology that is always developing, it is difficult to completely safeguard against voyeurism as is the subject of this bill.

The United States Supreme Court has stated that American citizens have the protection of the Fourth Amendment (freedom from search and seizure absent warrant) when there is a reasonable expectation of privacy. Without a reasonable expectation of privacy, however, there is no privacy right to protect. Files stored on disk or tape in the home are protected, but the rule becomes less clear when applied to files stored on an Internet access provider's

server. Web servers, on the other hand, may be protected by federal law. It is argued that consent of the access provider, however, is all that is required for law enforcement authorities to search and seize any files in the possession of that access provider. Internet service providers may have a lot of information about the users because servers routinely record information about users' e-mail and web browsing habits.

A Texas judge issued a temporary restraining order against a computer consultant, Kevin Massey, prohibiting him from posting messages on the Internet alleging vulgar and obscene behavior by the operators of the Dallas-based Internet America Inc. access service, Robert and Theresa Maynard. The order also prohibited Massey from posting "private information" about them.

Because the internet has the potential of being a "domain" – no pun intended, that is virtually impossible to regulate, it is vital that we, as legislators, maintain the proper number of "traffic

signals” for the type of material that is transmissible while at the same time respecting fundamental individual rights to privacy, free speech, and expression. This is no simple task, so it requires the input of every perspective to ensure that legislation is thorough and narrowly tailored.

Mr. Chairman and Mr. Ranking Member, I support this bill as reported from the Subcommittee, and I urge my colleagues to likewise support it. Thank you.

Chairman SENSENBRENNER. Are there amendments?

[No response.]

Chairman SENSENBRENNER. Without objection, the Committee amendment in the nature of a substitute laid down as the base text as amended is adopted. A reporting quorum is present. The question occurs on the motion to report the bill S. 1301 favorably as amended.

All in favor will say aye? Opposed, no?

The ayes appear to have it. The ayes have it. The motion to report favorably is agreed to.

Without objection, the bill will be reported favorably to the House in the form of a single amendment in the nature of a substitute, incorporating the amendment adopted here today.

Without objection, the Chairman is authorized to move to go to conference pursuant to House rules. Without objection, the staff is directed to make any technical and conforming changes, and all Members will be given 2 days as provided by the House rules in which to submit additional dissenting supplemental or minority views.

